

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 25 of 1988

in

SPECIAL CIVIL APPLICATION No 4589 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NAMITA ASTHANA

Versus

GUJARAT SHEEP & WOOL DEVELOPMENT CORPORATION LTD.

Appearance:

MR ARUN H MEHTA for Appellant
MR PV HATHI for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 09/12/98

ORAL JUDGEMENT (Per Patel, J.)

Unsuccessful petitioner before the learned Single

Judge in Special Civil Application No.4589 of 1987, on 2.2.1988 has preferred this L.P.A.

2. In response to an advertisement published by the respondent No.1 herein in 'Sandesh' Newspaper of 19.2.1983 inviting applications for the post of a Carpet Designer, vide Annexure 'A', the appellant submitted an application dated 20.2.1983, vide Annexure 'B'. The requirement of qualification as advertised was that "the candidate should be a graduate/diploma holder in design from any recognised institute like NID and having experience in the field". In the application, the appellant had pointed out that "after graduating from the design school, Ahmedabad with a degree in textiles, she has chosen the field of woolen floor coverings as it is a specialised area by itself". The appellant was called for interview, and ultimately, by an order dated 12.3.1983, the appellant was offered the post of Carpet Designer on probation with the respondent No.1 Corporation, and by office order dated 30th March 1983, vide Annexure 'E', the appellant was appointed as Carpet Designer with effect from 16.3.1983. Suffice it to say that the probation period continued till the date of her termination from service.

3. It appears that in view of the fact that several units of respondent Corporation were closed, the Board of the respondent Corporation reviewed the decision about the post of Carpet Designer. Reading Annexure-1 to the affidavit in reply at page 55 of this compilation, which is an extract of the 70th meeting of the Board of Directors, it reflects that only one centre at Bodeli was functioning while the remaining centres at Chakar, Kasden and Vav were closed. Reading the said resolution, it appears that the Carpet Designer did not design even a single design for carpet ever since she was appointed. It was further observed in the minutes that Assistant Manager (Carpets) who was working in the Corporation for more than three years should be able to adequately look after the activity. The Board therefore resolved to abolish the post of Carpet Designer with immediate effect. It also transpires that the Managing Director passed an order 4.2.1984 to the effect that the post of General Manager shall be held in abeyance.

4. The appellant filed a petition inter alia contending that she was appointed as a Carpet Designer and was continued on probation but in fact she was given the charge of post of General Manager (Marketing) and she held that post for a period of 10 months. She was also given other executive assignments, as contended by her.

The grievance was that the decision taken was not honest but a malafide decision was taken.

5. It is pointed out on behalf of the Corporation that the post of Carpet Designer was abolished for the reasons referred to hereinabove. It is further pointed out that infact there was no work of carpet designing, and, therefore, the appellant was looking after executive functions, but that does not mean that the appellant was appointed on an executive post. The appellant had no qualification for being appointed on the post of General Manager (Marketing).

6. Mr. Hathi, learned counsel appearing for the respondent Corporation submitted that the Board may abolish certain posts which may result in the holder thereof ceasing to be in service, has got to be recognised; It is well established by a catena of judicial decision that the power to create, continue or abolish a post is inherent in the administration and a policy decision was taken by the management/administration depending upon exigencies of circumstances and administrative necessities; As a result of abolition of post, the services of its incumbent may be required to be terminated but such termination is neither dismissal nor removal as understood within the meaning of Article 311 of the Constitution of India; The abolition of a post is not a penalty against any employee and therefore, opportunity of showing cause against the proposed penalty as in the case of dismissal or removal, does not arise; Whether a post should be retained or abolished is essentially a matter for the administration/management to decide and such a decision if taken, cannot be set aside by the Courts.

7. Learned Single Judge, after taking into consideration the affidavit in reply along with the annexures held that the decision to abolish the post of Carpet Designer was not malafide, and it was only as a result of abolition of the post of Carpet Designer that the petitioner's services came to be terminated. Learned Single Judge held that the appellant was not entitled to any relief as prayed for, and rejected the petition.

8. After going through the Annexure-I at page 55, we find that there was sufficient reason to abolish the post. Ultimately, taking into consideration the exigencies of the situation and administrative necessities, the decision was taken. Merely because the appellant was appointed, and that too on probation which continued from time to time till the date of termination

and was given executive work as there was no work of Carpet Designer, it cannot be said that the decision to abolish the post is bad, illegal or malafide. When the decision to create the post of Carpet Designer was taken, the administration anticipated business for the reasons stated in Annexure-2 [page 57]. However, ultimately, it is a matter of business and in business if the respondent Corporation has thought it fit to review the decision, it cannot be said that the same is malafide. In the facts and circumstances of the case, the petitioner is not entitled to any relief as prayer for, and the learned Single Judge has rightly rejected the petition.

The appeal is dismissed.

csm./ -----